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Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

Re: Notice of Oral *Ex Parte* Presentations – Request for
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On April 13, 2005, Messrs. Darnell Washington, President of Destiny Licenses, LLC (“Destiny”); Erwin G. Krasnow, Esq., Garvey, Schubert Barer, counsel to Destiny; David Honig, Executive Director, Minority Media & Telecom Council (“MMTC”); and the undersigned, counsel to Max Media of Montana, LLC (“Max Media”) in the above-referenced docket, met with Robert H. Ratcliffe, Deputy Bureau Chief of the Media Bureau; Mary Beth Murphy, Chief, Media Bureau Policy Division; John B. Norton, Deputy Chief, Media Bureau Policy Division; and Michael S. Perko, Chief, Media Bureau’s Office of Communications & Industry Information, regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004).

The representatives of Destiny and Max Media explained the reasons for pursuing this matter in the form of a request for expedited declaratory relief. There is an opportunity to avoid a greater harm to the new licensee of KTGF(TV), a minority owner, if the Commission clarifies the network territorial exclusivity rule before the current term of the KTGF(TV) affiliation agreement expires on July 1, 2005. A declaratory ruling would resolve uncertainty by stating that, if NBC continues its current course of conduct and denies its programming to KTGF(TV), the 1999 letter from NBC to Sunbelt is sufficient evidence to warrant the issuance of an order to show cause why the licenses of KBAO(TV), Lewistown, Montana, KBBJ(TV), Havre, Montana, KJWY(TV), Jackson, Wyoming, KSWY(TV), Sheridan, Wyoming, KCWY(TV), Casper, Wyoming, and KTVH(TV), Helena, Montana

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(referenced in the 1999 Letter) should not be revoked for violating the Commission's network territorial exclusivity rule, 47 C.F.R. § 73.658(b). Such a declaratory ruling would be in the public interest, as Sunbelt and NBC would be put on notice of the consequences in time to advert a rule violation.

Max Media and Destiny both referred to their pleadings in this proceeding and reiterated that Sunbelt entered into a confidential multi-station network affiliation arrangement with NBC, which has resulted in among other things imminent cancellation of NBC's network affiliation with KTGF(TV). As evidence of that arrangement, attached to the initial request was a letter dated April 26, 1999, from John Damiano, then the Senior Vice President for Affiliate Relations at NBC, to James E. Rogers, the controlling owner and President of Sunbelt (the "NBC Letter"). Neither NBC, nor Sunbelt, disputes the authenticity of the NBC Letter, and neither NBC, nor Sunbelt, have offered any previous or subsequent correspondence between the parties to change the letter's apparent meaning.

Max Media quoted the express language of Section 73.658(b), which makes clear "any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another broadcast station . . . located in a different community from broadcasting any program of the network organization. . . " constitutes a violation of the rule. Furthermore, uncontroverted evidence of such an arrangement is before the Commission in this proceeding in the form of the NBC Letter. Therefore, all of the factual arguments advanced by NBC and Sunbelt are irrelevant, given the NBC Letter, its apparent meaning, and NBC's current course of conduct. All that remains in the record of this proceeding are arguments regarding the meaning of this rule section, which underscores the need for, and appropriateness of, a declaratory ruling.

Darnell Washington, President and sole owner of Destiny Licenses, LLC, the new licensee of KTGF(TV), described NBC's current course of conduct, and the devastating impact it would have on KTGF(TV), its employees and Great Falls residents if NBC were to affiliate with a distant Helena, MT station. He said Destiny had formally sought a renewal of KTGF(TV)'s network affiliation agreement with NBC, including meeting with NBC President Bob Wright and Affiliate Relations Executives. NBC, however, was indifferent to the merits of KTGF(TV)'s strong position in the local Great Falls market, as well as its plans for expansion of local news programs and community involvement and did not place much value on new minority ownership within the ranks of NBC affiliates. Instead, Mr. Wright said that he would abide by a commitment made in 1999 to James Rogers, President of Sunbelt, to take away the NBC affiliation from KTGF(TV) and award it to Sunbelt's Helena television station. Mr. Washington stressed the importance of the Commission action to be taken prior to July 1, 2005, the expiration date of the current NBC affiliation agreement.



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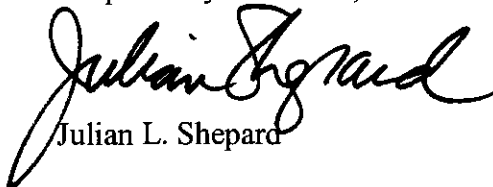
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MMTC's representative stated that the continued development of minority television ownership is vital to the industry, and the Courts are watching; citing Prometheus Radio Project v. FCC, 373 F.3d 372, 420-21 (3d Cir. 2004), *rehearing denied*, September 3, 2004 (petitions for certiorari pending) (vacating the Commission's repeal of the Failing Station Solicitation Rule). Minority owned broadcasters like Destiny do not simply appear overnight — they come into being through intensive effort. Today there are only 21 minority-owned full power television stations — an embarrassing and declining 1.2% of the total — down from 33 stations in 1999. KTGF(TV) was the only new minority-owned station in 2004. Destiny's acquisition of KTGF(TV) was the culmination of three years of work by industry veteran and NAB Leadership Program veteran Darnell Washington, and by MMTC, which together examined possible transactions and raised the necessary funds.

MMTC added that, like Destiny, most minority broadcast companies will begin in small markets, and in light of the requirements of venture capital firms and debt providers, they will typically need to start by acquiring cash-flowing, top-four network affiliates. Often these stations will be located in markets like Great Falls, where minority-themed programming is not a viable option in light of the population's demographics. A decision that snuffs out Destiny's growth without even affording the company an opportunity to prove itself in the marketplace would profoundly chill the ability of minority owned broadcast companies to secure financing and opportunity.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Messrs. Ratcliffe, Norton, Perko, and Ms. Murphy.

Respectfully submitted,



Julian L. Shepard

cc: Robert H. Ratcliffe
Mary Beth Murphy
John B. Norton
Michael S. Perko